

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Ill-Shin Kim, et al.
Application No. : 10/549,934 Confirmation No.: 7907
Filed : September 20, 2005
For : REFRIGERATOR
Group Art Unit : 3744
Examiner : William R. Tapolcai

Washington, DC
November 9, 2009

Mail Stop Petition
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION UNDER 37 C.F.R. §§ 1.67 AND 1.182 TO PLACE
SUPPLEMENTAL DECLARATION AND SWORN STATEMENT IN FILE**

Sir:

Pursuant to 37 C.F.R. §§ 1.67 and 1.182, patentees and their assignee (“Petitioners”) hereby petition that the attached Declaration for Utility Patent Application (37 CFR § 1.63) and Supplemental Declaration of Yong-Chol Kwon, Supplemental Declaration of Ill-Shin Kim, Supplemental Declaration of Seon-Il Yu, and Supplemental Declaration of Kun-Jun Seok (collectively “the Supplemental Declarations”), be placed in the file of U.S. Patent Number 7,484,382 (“the ‘382 Patent”), which issued on February 3, 2009 from Application Number 10/549,934 (“the ‘934 Application”). The ‘934 Application claims priority to four Korean patent applications: KR 10-2003-0019726, KR 10-2003-0019727, KR 10-2003-0019732, and KR 10-2003-0019733, and was filed as the U.S. national stage of PCT Application No. PCT/KR2004/000692 (“the ‘692 PCT Application”).

If, for some reason, the Petition under 37 C.F.R. § 1.182 is dismissed or not granted, please treat this as a Petition pursuant to 37 C.F.R. § 1.183, wherein Petitioners herein petition that the Supplemental Declarations be placed in the file of the '382 Patent.

By this Petition, Petitioners seek to submit the above-referenced Supplemental Declarations to correct any error that might exist in the February 24, 2004 Declaration and Power of Attorney ("February 2004 Declaration") as a result of the inventors' good faith belief that they could properly authorize another to have the declaration signed on their behalf. The Supplemental Declarations set forth the facts and circumstances in which the February 2004 Declaration was understood and approved by the four inventors of the '382 Patent, Yong-Chol Kwon, Ill-Shin Kim, Seon-Il Yu, and Kun-Jun Seok.

In particular, Petitioners seek to submit the Supplemental Declaration of Yong-Chol Kwon, one of the co-inventors who coordinated the preparation and filing of materials related to the '692 PCT Application and the '934 Application. The Supplemental Declaration of Yong-Chol Kwon indicates that Mr. Kwon provided the other three co-inventors, Ill-Shin Kim, Seon-Il Yu, and Kun-Jun Seok, with the content included in the '692 PCT Application and the '934 Application. Each of the co-inventors, including Mr. Kwon, read and understood the content of both applications. Mr. Kim, Mr. Yu, and Mr. Seok then authorized Mr. Kwon to have the February 2004 Declaration signed on their behalf. Mr. Kwon communicated with a Korean law firm that assisted LG Electronics with the filing of these applications and authorized the law firm to sign the declaration on behalf of the four inventors. At all times throughout the preparation and filing of the applications, Mr. Kwon acted under the good faith belief that it was proper to authorize the inventors' signatures and did not have any intent to deceive the U.S. Patent and Trademark Office ("USPTO").

The Supplemental Declaration of Ill-Shin Kim, the Supplemental Declaration of Seon-Il Yu, and the Supplemental Declaration of Kun-Jun Seok further set forth the facts and circumstances in which the '692 PCT Application and the '934 Application were understood and approved by these co-inventors. These declarations indicate that Mr. Kim, Mr. Yu, and Mr. Seok each acted under the good faith belief that it was proper to authorize another to sign the February 2004 Declaration on their behalf, without any intent to deceive the USPTO.

Petitioners, in an observance of good faith and candor, seek to have these Supplemental Declarations placed in the file wrapper of the '382 Patent. In addition, Petitioners have attached an additional Declaration For Utility Patent Application (37 CFR § 1.63), which has been executed by each of the co-inventors.

Although there are no regulations or provisions specifically directed to the filing of supplemental declarations of the type attached hereto, Petitioners respectfully note that a similar petition was filed with the USPTO under the facts set forth in *Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.*, 228 F.3d 1338, 1344 (Fed. Cir. 2000), and that the procedure was acknowledged by the U.S. Court of Appeals for the Federal Circuit in that case. In *Ajinomoto*, the patentee discovered during litigation that at least one of the inventors authorized another to sign a declaration accompanying a U.S. application for patent on his behalf. *Id.* Upon this discovery, the patentee filed a petition to the Commissioner of Patents and Trademarks pursuant to 37 C.F.R. §§ 1.67 and 1.182, along with a supplemental declaration personally signed by each of the inventors, requesting that the USPTO place the supplemental declaration in the patent's file wrapper. *Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.*, No. 95-218, 1998 U.S. Dist. LEXIS 3833, at *24 (D. Del. Mar. 13, 1998). This supplemental declaration stated that the

authorization of the signatures “was the result of a lack of knowledge of the technical requirements of U.S. patent law and was made without any deceptive intent.” *Id.* at *24-25. The district court found that the patent-in-suit was valid and the Federal Circuit affirmed the holding, taking into account the inventors’ later-filed supplemental declaration. *Ajinomoto*, at 1344. Petitioners accordingly seek to utilize procedures similar to those used by the applicant in *Ajinomoto*.¹

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This Petition is accompanied by:

(1) The Supplemental Declaration of Yong-Chol Kwon

(2) The Supplemental Declaration of Ill-Shin Kim

(3) The Supplemental Declaration of Seon-Il Yu

(4) The Supplemental Declaration of Kun-Jun Seok

(5) The Declaration For Utility Patent Application (37 CFR § 1.63); and

(6) Authorization to charge \$400.00 to Deposit Account No. 06-1050 in payment of the petition fee set forth in 37 C.F.R. § 1.17(f). The Director is also authorized to charge any fees that may be required, or credit any overpayment to Deposit Account No. 06-1050.

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¹ A similar petition under 37 C.F.R. §§ 1.67 and 1.182 to place a supplemental declaration and sworn statement in the file wrapper of U.S. Reissued Patent Number 38,868 was filed with the USPTO by the patentees in *LG Electronics, Inc. v. Quanta Computer Inc.*, No. 07-cv-361, Opinion and Order (W.D. Wis., July 16, 2008), citing the procedure followed in *Ajinomoto*. The USPTO granted the petition on December 23, 2008.

Accordingly, Petitioners respectfully request that this Petition be granted and the above-identified Declarations be placed in the file of the '382 Patent. Early and favorable consideration of this Petition is respectfully requested. Please contact the undersigned at the telephone number below for any outstanding matters.

November 9, 2009

Respectfully submitted,

/Jeremy J. Monaldo/

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